

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JASON PEREZ	CIVIL ACTION
v.	NO. 12-7057
DAVID A. VARANO, et al.	

MEMORANDUM

Baylson, J.

June 14, 2019

In this Petition for Relief from a state court conviction and sentence of life imprisonment after conviction of first degree murder, under 28 U.S.C. § 2254, Magistrate Judge Rice had prepared an extensive Report and Recommendation reviewing the allegations by Petitioner and rejecting them (ECF 29). Petitioner has filed objections (ECF 35). Even though there was no responsive brief from the Philadelphia District Attorney’s Office, the Court has determined that the Report and Recommendation shall be approved and adopted and the Petition for Relief dismissed with prejudice, and there is no probable cause to issue a certificate of appealability.

Petitioner was convicted after a jury trial for his involvement the murder of Brian Green by Perez’s co-defendant, Jeffrey Dawkins. The Petitioner does not specifically challenge the sufficiency of the evidence, but particularly brings to this Court a contention that his trial counsel was ineffective because of certain conduct at the jury trial. Specifically, the Petitioner asserts that his trial counsel was ineffective by failing to object, move to strike, request a mistrial, or request a cautionary instruction when a police officer testified that he arrested Perez during a routine traffic stop because Perez “was wanted for several shootings.”

The record shows that Dawkins’ counsel objected to testimony from the arresting officer as to how he recognized Perez at the traffic stop. Contrary to the petition, as the Report and Recommendation noted, Dawkins’ counsel objected, but the trial judge overruled the objection but

noted that the officer's testimony was not relevant to Dawkins. The judge noted that Perez's counsel had not yet made any valid objection. As the Report and Recommendation states, there was a sidebar discussion in which the judge offered to give a cautionary instruction which trial counsel declined for sufficient reason. The officer's challenged testimony was not mentioned again during the trial.

In his Objection, Petitioner asserts that this colloquy requires this Court to determine his trial counsel was ineffective. Petitioner fails to cite any authority to support his claim. In addition to not fully explaining what happened at the trial, as stated in the Report and Recommendation, Petitioner in his Objection asserts that there was no valid arrest warrant out for the Petitioner, a fact which his trial counsel knew. However, there was no discussion at the trial about an arrest warrant for the Petitioner, which could have been much more prejudicial.

Petitioner makes other assertions in his objections as to what the jury knew, which are unsubstantiated by the record. Petitioner also asserts that his trial counsel subsequently said (although the context is not clear), "If I had to do it again, I wouldn't have done it that way." This does not support a claim of ineffective counsel.

In addition, Petitioner asserts that the Report and Recommendation is defective for rejecting his second claim of being convicted based on testimony which was subsequently recanted. Petitioner fails to note that the State Court PCRA proceedings included an evidentiary hearing on this issue and the PCRA judge rejected the credibility of the witnesses Petitioner claims exonerated him.

Under Strickland v. Washington, 466 U.S. 668 (1984), this Court cannot find that Petitioner's trial counsel was ineffective to the point of denying him his Sixth Amendment right to

competent counsel.

Because the Court must defer to the factual findings and conclusions of the state courts, in which his conviction was affirmed on direct appeal, and his PCRA petition was denied after full consideration of the issues.

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